



In the Matter of Robert Biluck,  
Department of Corrections

CSC Docket No. 2018-298

: **STATE OF NEW JERSEY**  
:  
: **FINAL ADMINISTRATIVE ACTION**  
: **OF THE**  
: **CIVIL SERVICE COMMISSION**  
:  
: **Request for Waiver of Repayment**  
: **of Salary Overpayment**  
:  
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**ISSUED: August 3, 2018 (JET)**

Robert Biluck, a provisional Manager 3, Fiscal Resources<sup>1</sup> with the Department of Corrections, represented by Alfred C. Laubsch, Business Manager, IBEW Local 30, requests a waiver of repayment of a salary overpayment, pursuant to *N.J.S.A.* 11A:3-7, which provides that when an employee has erroneously received a salary overpayment, the Civil Service Commission (Commission) may waive repayment based on a review of the case.

By way of background, effective March 8, 2014, the petitioner was promoted to provisional Manager 2, Fiscal Resources (Range M34). Prior to his promotion, the petitioner was serving as a Business Manager, Corrections. At the time of his promotion, the IBEW’s collective negotiations agreement covering July 1, 2013 through June 30, 2015 had not yet been approved by the State. However, it was approved in August 2014 with an effective date of January 1, 2014. Thereafter, the petitioner filed a grievance arguing that he was entitled to a retroactive salary adjustment since his position as Business Manager, Corrections was covered as of the January 1, 2014 effective date of the collective negotiations agreement. Based on the aforementioned terms of the collective negotiations agreement and this agency’s rules, the appointing authority retroactively recalculated the petitioner’s salary as a Business Manager, Corrections as \$94,382.77 (Range &32, step 7), effective January 11, 2014.

<sup>1</sup> The petitioner was serving as a Manager 2, Fiscal Resources, at the time he filed the grievances that are the subject of this matter.

Thereafter, the Salary Adjustment Committee (SAC) recommended that the petitioner's salary as a Manager 2, Fiscal Resources be retroactively adjusted to \$103,029.30 (Range M34, step 7). As such, with respect to his salary as a provisional Manager 2, Fiscal Resources, the appointing authority retroactively recalculated the petitioner's salary to \$103,029.30<sup>2</sup> effective March 8, 2014. As a result of the adjustment, the appointing authority issued three pay checks to the petitioner, dated March 31, 2017, representing the retroactive amount due to him. On April 11, 2017, the appointing authority notified the petitioner that his salary was disapproved and it advised him that he was in salary overpayment status in the amount of \$23,665.20.<sup>3</sup> As such, the appointing authority recalculated his salary as a provisional Manager 2, Fiscal Resources to \$95,101.62 (Range M34, step 5)<sup>4</sup> effective March 8, 2014. Thereafter, by way of letter dated June 30, 2017, the Office of Management and Budget (OMB) notified the petitioner he was in overpayment status in the amount of \$4,272.68 and was required to participate in a salary overpayment plan. Thereafter, the petitioner filed a grievance stating that his salary was properly determined as \$103,029.30, which was denied.<sup>5</sup> Records reflect that, effective October 28, 2017, the petitioner was appointed as a provisional Manager 3, Fiscal Resources and his salary is \$110,000.

In his request for waiver of salary overpayment, the petitioner acknowledges that, although his collective bargaining agreement was applicable to his position while he was employed as a Business Manager, Corrections, the same collective bargaining agreement did not apply to his position as a Manager 2, Fiscal Resources. Regardless, the petitioner contends that, at the time he was promoted, no one was aware that the collective negotiations agreement would have an effective date of January 11, 2014 and the SAC's recommendations were rejected by the appointing authority. Moreover, the petitioner asserts that, in accordance with his collective negotiations agreement and the SAC's recommendations, his salary as a Manger 2, Fiscal Resources should have been \$103,029.30 (Range M34, step 7).<sup>6</sup>

Additionally, the petitioner maintains that he is experiencing an economic hardship, as the \$23,665.20 retroactive salary award is now being removed from him at a rate of \$500 per pay period. The petitioner requests to defer repayment of

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<sup>2</sup> In this matter, the record reflects that, by e-mail dated March 15, 2017, the appointing authority indicated that this agency initially approved the petitioner's annual salary as \$103,029.30, which was effective as of the date of the petitioner's promotion as a Manager 2, Fiscal Resources. However, the record reflects that the petitioner's matter was also sent to the SAC at some point for review.

<sup>3</sup> By e-mail dated April 11, 2017, the petitioner acknowledged that this agency advised the appointing authority that an administrative error occurred and, as such, his salary would be adjusted to \$94,382.77.

<sup>4</sup> Effective August 28, 2014, the petitioner was appointed as a permanent Manager 2, Fiscal Resources and his salary remained at \$95,101.62.

<sup>5</sup> The appointing authority denied the petitioner's grievance in a determination dated July 6, 2017.

<sup>6</sup> The petitioner states that the appointing authority was aided by an employee from this agency with respect to the calculation of his salary at the time his grievance was pending.

the overpayment amount until this agency addresses this matter. The petitioner adds that he could not have been aware that the overpayment was erroneously awarded. Further, he contends that \$500 per pay period in salary recovery is equivalent to a 22.78% reduction in his net pay, and the total monthly reduction in his pay is \$1,082.50. In support, the petitioner submits a copy of the OMB's June 30, 2017 notice and states it is the only notice he received pertaining to the repayment of the overpayment amount.<sup>7</sup> Moreover, the petitioner submits a copy of his pay stub dated June 30, 2017 indicating that his balance for the overpayment amount was \$23,772.68 and \$500 was deducted from his pay toward the unpaid balance.

In response, the appointing authority maintains that the petitioner received \$23,665.20 in salary overpayment. In addition, the appointing authority states that, although the overpayment was issued in error, such action does not demonstrate that he is experiencing an economic hardship, as the petitioner was notified within a reasonable amount of time that the overpayment was issued. Moreover, the appointing authority contends that the petitioner was aware that his initial request for a salary adjustment was initially denied.

It is noted that this agency did not receive the proper documentation from the appointing authority indicating that the petitioner's salary should have been adjusted to \$103,029.30. Therefore, as a result of the administrative error, this agency did not approve the \$103,029.30 salary.

## CONCLUSION

*N.J.A.C.* 4A:3-4.9(b) provides that employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. *N.J.A.C.* 4A:3-4.9(c) provides that when an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (b) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary. *N.J.A.C.* 4A:3-4.21 (a) provides that the Commission may waive salary overpayments in specific circumstances.

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<sup>7</sup> It is noted that OMB's June 30, 2017 notice notified the petitioner that the overpayment of \$4,272.68 would be recovered over 49 pay periods. The petitioner notes that the deduction in the amount of \$4,272.68 to be repaid at a rate of \$87.20 per 49 pay periods is far less than the \$500 deduction currently deducted from his pay. He adds that the notice was issued before he was notified of the July 6, 2017 grievance determination.

In the instant matter, the petitioner argues that the appointing authority initially approved his salary as a Manager 2, Fiscal Resources as \$103,029.30. He also argues that the appointing authority improperly revoked that salary and informed him that he was overpayment status in the amount of \$23,665.20. He states that he is now experiencing an economic hardship as a result of the salary repayments. The record reflects that the appointing authority issued checks to the petitioner on March 31, 2017 and notified him within seven business days on April 11, 2017 that the \$103,029.30 salary was disapproved. Upon review of the matter, the Commission disagrees that the petitioner was in overpayment status. Rather, the Commission determines the appellant's salary should have been properly adjusted to \$103,029.30.

The record reflects that, while the petitioner was promoted in March 2014, the new collective negotiations agreement was not settled until August 2014. That agreement, effective January 1, 2014, included the petitioner's title of Business Manager, Corrections. Thus, based on the terms of the collective negotiations agreement, the petitioner's salary as of January 11, 2014 should have been \$94,382.77.

In this regard, the record reflects that the petitioner's salary as a Business Manager, Corrections prior to the effective date of the August 2014 negotiations agreement was \$90,929.82. Effective January 11, 2014, pursuant to the August 2014 negotiations agreement, the appellant's salary as a Business Manager, Corrections was adjusted to \$94,382.77. At the time the petitioner was promoted as a provisional Manager 2, Fiscal Resources on March 8, 2014, which was prior to the effective date of the August 2014 negotiations agreement, his salary was adjusted to \$95,101.62. However, pursuant to the August 2014 negotiations agreement, his salary should have been adjusted to \$103,029.30.

As illustrated by the charts listed below, the petitioner was entitled to a salary of \$103,029.30 as of March 8, 2014.

<b>Salary Schedule (Effective January 11, 2014)</b>	<b>Salary</b>
Range &32, Step 7	\$94,382.77
Range &34, Step 7	\$100,056.11
Range M34, Step 7	\$103,029.30

<b>Date</b>	<b>Title</b>	<b>Salary Before Contract</b>	<b>Salary After Contract</b>
January 11, 2014	Business Manager, Corrections (Range &32)	\$90,929.82	\$94,382.77
March 5, 2014	Manager 2, Fiscal Resources (Range M34)	\$95,101.62	\$103,029.30

In order to get to the petitioner's proper salary as of March 8, 2014, the rules set forth in *N.J.A.C.* 4A:3-4.9 must be applied taking into account the petitioner's salary **after** the January 11, 2014 collective negotiations agreement increase. As of January 11, 2014, after the collective negotiations increase, the petitioner's salary was properly adjusted to \$94,384.77 (Range &32, step 7). Thus, as of his March 8, 2014 promotion, his new salary should have been calculated using that figure **and the appropriate salary schedule**. *N.J.A.C.* 4A:3-4.9(c) states when an employee is advanced to a title with a different salary schedule from the employee's previous salary schedule, the steps in *N.J.A.C.* 4A:4-4.9(b) are **first performed** in the previous schedule. The title of Manager 2, Fiscal Resources has a different salary schedule than the petitioner's previous title of Business Manager, Corrections. Accordingly, using the salary schedule for his prior title of Business Manager, Corrections and applying the provisions of *N.J.A.C.* 4A:3-4.9(b), the appellant, before being slotted into the salary schedule for his new title of Manager 2, Fiscal Resources, would have been placed on step 7 of Range &34, or \$100,056.11. Thereafter, applying his new salary schedule, he gets slotted into step 7 of Range M34, or \$103,029.30.

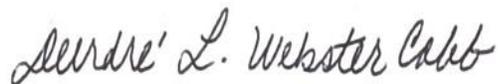
Accordingly, the Civil Service Commission finds that the petitioner was not overpaid. Thus, his salary should be adjusted as per above and he should be issued the appropriate amounts of differential back pay.

### ORDER

Therefore, it is ordered that this request be granted and the petitioner be awarded the appropriate amounts of differential back pay.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>st</sup> DAY OF AUGUST, 2018



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